



# UNITED STATES PATENT AND TRADEMARK OFFICE

CL  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,227	01/08/2002	Bernd Riedl	BAYER-0015-A	5714
23599	7590	08/10/2007	EXAMINER	
MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			DESAI, RITA J	
ART UNIT		PAPER NUMBER		
1625				
MAIL DATE		DELIVERY MODE		
08/10/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/889,227	RIEDL ET AL.
Examiner	Art Unit	
Rita J. Desai	1625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 July 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) See Continuation Sheet is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3,4, 6-10, 18-27, 33-40, 42, 44, 45, 50, 53, 54, 68, 69, 71, 90-95. is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 1,,3,4, 6,-10, 18-27, 33-40, 42, 44, 45, 50, 53, 54,68, 69, 71, 90-95..

### DETAILED ACTION

Claims pending 1,3,4, 6-10, 18-27, 33-40, 42, 44, 45, 50, 53, 54,68, 69, 71, 90-95.

The rejection of claims 62, 64, 65, 70, 72, 55, 58, 59, 62, 64, 65 and 68 under USC 112 has been withdrawn as applicants have deleted the claims corresponding to the rejection..

The Obvious type Double patenting rejection over claims US 10/071248 has not been withdrawn. The US 10/071248 claims , even though they have the proviso that one of X1-X7 is a OH or a -OC(O)C1-C4 , there are no compounds enabled and made in the applicants with these substituents , hence essentially the claims are the same as those in the instant application..

Thus the rejection still stands.

Applicants have cancelled claim 61 from 09/948, 915 and claim 12 from 10/086417, however applicants have inserted new claims in the instant application which reads on the genus of the 09/948, 915 claims. The genus of claim 1 also reads on genus of claim 1 of US '915.

Applicants are reminded of the restriction /election in this application.

The request by the applicants to limit the L' group to pyridinyl substituted by C(O)Rx and expand the substitution on the B phenyl to include the substitutions R7 and halogen, wherein R7 is an alkyl optionally substituted or an alkoxy has been considered by the examiner and now the elected group is drawn to compounds, composition and method of use drawn to a formula I wherein in A, M is O or S, L' is a pyridinyl substituted by atleast C(O)Rx, L is a phenyl and B is a phenyl substituted by R7 and halogen.

The US '417 application is drawn to the method of treating, however the examiner had not restricted this and hence the Obvious type Double Patenting still stands.

The Obvious Type Double Patenting still stands on US 09/993,647 as applicants have not filed a terminal disclaimer over it.

***Conclusion***

Claims 1,3,4, 6,-10, 18-27, 33-40, 42, 44, 45, 50, 53, 54,68, 69, 71, 90-95 stand rejected.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita J. Desai whose telephone number is 571-272-0684. The examiner can normally be reached on Monday - Friday, flex time..

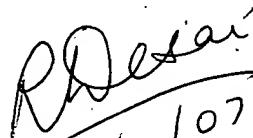
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rita J. Desai  
Primary Examiner  
Art Unit 1625

R.D.  
August 7, 2007

  
8/7/07